

REMARKS

Claims 11 and 15-37 are pending. Favorable reconsideration is respectfully requested.

At the outset, Applicants would like to thank Examiner Marx for indicating during the discussion held on May 28, 2002, that the above amendment would obviate the rejection under 35 U.S.C. § 102(b) over Toba et al, as well as the rejections under 35 U.S.C. § 112 and § 101.

The rejection of Claims 1-3, 6, and 11-13 under 35 U.S.C. § 102(b) over Toba et al is believed to be obviated by the above amendment. Claims 1-3, 6, and 12-13 are cancelled. Further, amended Claim 11 and new Claims 15-37 are neither disclosed nor suggested by Toba et al.

Toba et al describes a method of administering an anti-oxidation food product, such as tea, containing *Lactobacillus plantarum* to a rat.

In contrast, the claimed invention relates to a method of reducing the level of at least one oxidative stress factor in the blood of a mammal by administering to a mammal in need thereof an effective amount of *Lactobacillus plantarum* 299v.

Toba et al fails to disclose or suggest a method of administering *Lactobacillus plantarum* 299v to a mammal in need of a reduction in the level of at least one oxidative stress factor in the blood. Accordingly, Toba et al fails to describe or suggest the claimed invention, and therefore withdrawal of this ground of rejection is respectfully requested.

The rejection of Claims 1-4, 6, and 11-14 under 35 U.S.C. § 102(b) and § 102(e) over Bengmark et al is believed to be obviated by the amendment above. During a discussion with Examiner Marx on May 28, 2002, the rejections were clarified as a single rejection under 35 U.S.C. § 102(b) over Bengmark et al. Claims 1-4, 6, and 12-14 are cancelled. Further,

amended Claim 11 and new Claims 15-37 are neither disclosed nor suggested by Bengmark et al.

Bengmark et al only describes a method of growing *Lactobacillus plantarum* 299v in the stomachs of mammals. Therefore, Bengmark et al merely demonstrates that *Lactobacillus plantarum* 299v may be cultured in the stomachs of mammals.

In contrast, the claimed invention relates to a method of reducing the level of at least one oxidative stress factor in the blood of a mammal by administering *Lactobacillus plantarum* 299v to a mammal in need thereof. Accordingly, the present invention requires an identification of a mammalian population in need of a reduction in the level of at least one oxidative stress factor.

The CAFC has recently ruled in a case having similar claim language as the present application (See the attached copy of Rapoport v. Dement, 59 USPQ2d 1215 (CAFC 2001)). In Rapoport, the Court determined that a method for the treatment of sleep apneas fails to include the treatment of anxiety because the method of treatment of sleep apneas requires the identification of “a patient in need of such treatment” (see page 8, lines 9-13, and page 9, lines 25-27, of Rapoport). The Court explained that the basis of its decision relied on the fact that the “treatment of sleep apneas” was included “as a limitation” because the phrase “‘to a patient in need of such treatment’ would not have proper antecedent basis” otherwise (see page 8, lines 9-13, of Rapoport). Therefore, according to the Rapoport Court one must identify a “patient in need of such treatment” in order to treat the underlying phenomena.

Like Rapoport, the present invention relates to a method which contains the identification of “a mammal in need thereof”. Therefore, the identification of a population of mammals in need of a reduction of at least one oxidative stress factor in the blood is also included in this presently claimed method.

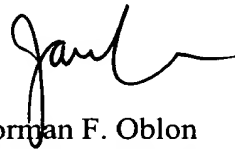
Bengmark et al fails to describe or suggest a step of identifying a mammal population in need of a reduction in the level of at least one oxidative stress factor. Accordingly, Bengmark et al fails to describe or suggest the claimed invention, and therefore withdrawal of this ground of rejection is respectfully requested.

The rejection of Claims 1-4 and 6 under 35 U.S.C. § 112, second paragraph, and § 101 is obviated by the cancellation of these claims. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Applicants respectfully submit that the present application is now in condition for allowance. Favorable reconsideration is respectfully requested. Should anything further be required to place this application in condition for allowance, the Examiner is requested to contact Applicants' attorney by telephone.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

Daniel J. Pereira, Ph.D.
Registration No. 45,518

James J. Kelly
Registration No. 41,504



22850

Tel.: (703) 413-3000
Fax: (703) 413-2220
NFO:DJP:TWB/la
I:\atty\Twb\204742us-am.wpd

204742US0PCT

Marked-Up Copy

Serial No: 09/787,893

Amendment Filed on:

HEREWITH

IN THE CLAIMS

Claims 1-10 and 12-14 (Cancelled).

Please amend the claims as follows:

--11. (Amended) A method of reducing the levels of at least one oxidative stress [factors] factor in the blood of a [mammal] mammal, comprising administering to a mammal in need thereof an effective amount of [a bacterial strain which gives rise to a significant increase in the faecal concentration of propionic acid to said mammal] Lactobacillus plantarum 299v.--

Claims 15-37 (New).